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Supreme Court of the United States.

OCTOBER TERM, 1897.

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PLAQUEMINES TROPICAL FRUIT COMPANY,
APPELLANT,

vs.

WILLIAM HENDERSON AND HENRY J. LEOVY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANT IN REPLY.

DUANE E. FOX,
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The position taken by us in this case is that the judgment of the courts of Louisiana, relied upon herein as a former adjudication, was absolutely void for lack of jurisdiction in the courts rendering the judgment. Such lack of jurisdiction, we maintain, is fundamental, because the case was one wholly between a State and citizens of other States, and was therefore confided by the Constitution, for the most imperative reasons, to the Federal

judiciary. The suit was brought by the State in her own courts and, in the present state of Congressional legislation, it was absolutely impossible to bring the merits of the case before any Federal tribunal for determination, and an entire clause of paragraph 1, section 2, of article III, of the Constitution will be stricken from that instrument, if the jurisdiction of the State court be sustained.

Furthermore, if such a judgment of a State court be sustained, on the ground that Congress has acted or failed to act, a portion of the original jurisdiction of the Supreme Court of the United States is wholly and irretrievably lost, no matter what public exigency may arise in the future requiring the exercise by this court of the very jurisdiction which the court is now invited to abdicate. That jurisdiction was conferred, not by Congress, but by the Constitution itself, and we deny that any power exists in Congress to withdraw that jurisdiction from this court, either absolutely or by making its existence depend upon a contingency, or upon an option to be exercised by a party to the cause, unless at the same time Congress provides the machinery by which the judicial power of *some* Federal court can be exercised, by appeal or removal, upon the merits of the controversy. For, at the very time when the national welfare shall most require the exercise of that jurisdiction, the moving party, a State about to do, or suspected of being about to do, injustice to a citizen of another State, will most assuredly use her option of having the controversy decided in her own tribunals.

Our position is attacked in the brief for appellees, filed herein, by arguments which may be classed under two general heads:

(1.) That the jurisdiction of the Supreme Court of the United States is not both original *and* exclusive.

(2.) That the State courts can take jurisdiction in all cases where Congress has not made the Federal jurisdiction exclusive.

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I.

Counsel for appellees seem in their brief to mistake our position, although we have tried to make it very clear. It is not necessary to our position that we should insist that, under the Constitution, the jurisdiction of the Supreme Court in controversies between a State and citizens of other States is both original and so exclusive that Congress cannot confer such jurisdiction upon other courts. What we do maintain is that Congress cannot confer upon the courts of the States a jurisdiction which, while nominally concurrent, is in fact *exclusive* of the courts of the United States. We do not insist that Congress cannot give concurrent jurisdiction in this class of cases to the inferior courts of the United States. Nor do we insist that Congress cannot permit concurrent jurisdiction to be exercised in this class of cases by the courts of the States, *provided* the right of supervision by the Federal judiciary, by appeal or removal, be simultaneously recognized and made practicable.

Such being our position, most of the cases cited in the brief for appellees are not opposed to our contention, as will be seen by a brief reference to them.

In Börs *vs.* Preston (111 U. S. 262) it was held that the original jurisdiction of the Supreme Court of the United States is not exclusive of the *circuit court of the United States* in a suit between a citizen of a State and an alien who is also a foreign consul.

In Ames *vs.* Kansas (111 U. S. 449) it was held that the original jurisdiction of the Supreme Court of the United States is not exclusive of the *circuit court of the United States*, in a case between a State and a citizen of another State, where the validity of a law of the United States is the question at issue.

In California *vs.* Southern Pacific Company (157 U. S.

229) it was held that the Supreme Court of the United States cannot take jurisdiction between a State and citizens of other States *and her own citizens*. This is of course true, as no jurisdiction is given by the Constitution to suits between a State and her own citizens. But in the present case the record showed that the defendants were both citizens of other States.

In Gittings *vs.* Crawford (1 Taney Circuit Court Reports, 1) it was held that the jurisdiction of the Supreme Court of the United States is not exclusive of the *district courts of the United States* in suits by a citizen of a State against a foreign consul, but that such jurisdiction may be given to "the inferior judicial tribunals of the *United States*."

In Graham *vs.* Stucken (4 Blatchford Circuit Court Reports, 50), a suit by a citizen of a State against a foreign consul, Mr. Justice [redacted] held: "I cannot say that the jurisdiction in this case is exclusively in the Supreme Court, but am satisfied that it may be conferred upon the inferior tribunals of the *Federal* judiciary."

The decision in none of the above cases, cited by the appellees, is contrary to our position. One case is cited, however, from a State court of New York, which both in reasoning and effect is opposed to the principle which we are maintaining. In Delafield *vs.* State of Illinois (2 Hill, 164) the State of Illinois sued a citizen of another State in the State courts of New York, which upheld their jurisdiction. We believe the reasoning of that case to be unsound, and we do not find that it has been followed by any Federal court in any case involving the precise point now before this court.

We call attention to the fact, however, that the case mentioned was not a suit by a State *in her own courts* against a citizen of another State, but in the courts of another State. That fact removes, to a certain extent, the evil sought to be avoided by the Constitution, and regarding which Hamilton said in the Federalist, "No man ought certainly to be

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a judge in his own cause, or in any cause in respect to which he has the least interest or bias." (Federalist, 80.) The case, rightly considered, cannot therefore be regarded as an authority for the jurisdiction claimed for the courts of Louisiana in this case.

II.

The remaining cases cited by counsel for the appellees are in support of their position that the State courts have jurisdiction in all cases where Congress has not made the Federal jurisdiction exclusive.

In Teal *vs.* Felton (12 Howard, 285) it was argued that a State court had no jurisdiction to try a case involving the action of a United States postmaster acting under the laws of the United States. This court held that the case was of a nature of which the State courts, under their ordinary jurisdiction, had cognizance and that there is nothing in the Constitution to exclude their jurisdiction on the ground that the construction of a law of the United States was involved.

Again, in Claflin *vs.* Houseman (93 U. S., 130) it was claimed that an assignee in bankruptcy could not sue in the State courts. It was held by Mr. Justice Bradley that the assignee could bring such a suit, no exclusive jurisdiction being given to the courts of the United States, that the laws of the United States are as much the law of the land as State laws are, and that in such cases the State courts do not exercise a new jurisdiction conferred upon them, but their ordinary jurisdiction derived from their constitution under the State laws.

In Houston *vs.* Moore (5 Wheaton, 1) the sole question was whether a State militiaman should be tried by a State court-martial or a United States court-martial. The case is absolutely not in point, for the Constitution provides for the urisdiction of civil courts only, not of military courts.

None of the cases just cited are in conflict with our position, although some of the general discussion found in the opinions, and not necessary to the decision of the particular case, may seem to be so. It is not necessary to our contention that we deny to State courts the jurisdiction which they possessed previous to the adoption of the Constitution, except where, by the necessary effect of the constitutional grant of judicial power, such jurisdiction is taken from them. They do not possess such jurisdiction where, as in this case, an original jurisdiction is vested in a Federal court by the Constitution itself, and where no legislation has been enacted whereby, if State courts be allowed to exercise the same jurisdiction, "all the causes of the specified classes shall, for weighty public reasons, receive their *original* or *final* determination in the courts of the Union" (The Federalist, No. 82). In such case "an authority is granted to the Union with which a similar authority in the States would be utterly incompatible." (*Ibid.*)

We can have no quarrel with what Congress may do with the appellate jurisdiction of the Supreme Court, for such appellate jurisdiction is by the Constitution expressly confided to the discretion of Congress. But the Constitution itself vests original jurisdiction in the Supreme Court in four classes of cases.

(1) Cases affecting ambassadors, other public ministers and consuls; (2) controversies between a State and foreign States, citizens and subjects; (3) controversies between two or more States; and (4) controversies between a State and citizens of another State.

If Congress may destroy the original jurisdiction of this court (or, what is the same thing, commit it to the option of one party, whose interest will be not to exercise such option) in one case, why not in all? And if Congress may, by acting or failing to act, deprive the other party of

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all power to bring the case before any Federal court for determination of the merits of the controversy, then not only is a portion of the Federal jurisdiction lost which each State contracted should exist, but that portion is lost which is of such great importance that the States committed it to the original cognizance of the highest court of the nation. We cannot believe that the founders intended, or contemplated the possibility, that a Federal jurisdiction so important might be thrown away by the intention or carelessness of Congress.

These classes of cases were particularly committed to the Federal judiciary for the purpose of preserving the peace, both foreign and domestic. No chain is stronger than its weakest link. The strength of a constitution must be measured not in times of calm, but in times of stress. If the position of appellees be correct, a plaintiff State, in time of greatest tumult, and therefore in time of greatest need of the restraint of the Federal compact and guaranty, may make her jurisdiction exclusive of that of the Federal judiciary. We submit that a construction which leads to such results cannot be sound.

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Of Counsel for Appellant.